

HOUSE BILL No. 1054

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-8-1-5; IC 5-8-1; IC 36-4-5-9.

Synopsis: Convictions and elections. Reconciles certain inconsistent provisions in current law regarding: (1) the definition of "felony"; and (2) when a certified copy of the sentencing order issued in connection with the removal of a public officer must be filed. (The introduced version of this bill was prepared by the sentencing policy study committee.)

Effective: July 1, 2007.

Lawson L, Foley

January 8, 2007, read first time and referred to Committee on Rules and Legislative Procedures.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1054

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-8-1-5, AS AMENDED BY P.L.113-2005,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 5. (a) This section does not apply to a candidate
4 for federal office.

5 (b) As used in this section, "felony" means a conviction in any
6 jurisdiction for which the convicted person might have been
7 imprisoned for ~~at least~~ **more than** one (1) year. However, the term does
8 not include a conviction:

9 (1) for which the person has been pardoned; or

10 (2) that has been:

11 (A) reversed;

12 (B) vacated;

13 (C) set aside; or

14 (D) not entered because the trial court did not accept the
15 person's guilty plea.

16 (c) A person is disqualified from assuming or being a candidate for
17 an elected office if:

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(1) the person gave or offered a bribe, threat, or reward to procure the person's election, as provided in Article 2, Section 6 of the Constitution of the State of Indiana;

(2) the person does not comply with IC 5-8-3 because of a conviction for a violation of the federal laws listed in that statute;

(3) in a:

(A) jury trial, a jury publicly announces a verdict against the person for a felony; or

(B) bench trial, the court publicly announces a verdict against the person for a felony; or

(C) guilty plea hearing, the person pleads guilty or nolo contendere to a felony;

(4) the person has been removed from the office the candidate seeks under Article 7, Section 11 or Article 7, Section 13 of the Constitution of the State of Indiana;

(5) the person is a member of the United States armed forces on active duty and prohibited by the United States Department of Defense from being a candidate; or

(6) the person is subject to:

(A) 5 U.S.C. 1502 (the Little Hatch Act); or

(B) 5 U.S.C. 7321-7326 (the Hatch Act);

and would violate either federal statute by becoming or remaining the candidate of a political party for nomination or election to an elected office or a political party office.

(d) The **subsequent** reduction of a felony to a Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5 **after the:**

(1) jury has announced its verdict against the person for a felony;

(2) court has announced its verdict against the person for a felony; or

(3) person has pled guilty or nolo contendere to a felony;

does not affect the operation of subsection (c).

SECTION 2. IC 5-8-1-38 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 38. (a) The following definitions apply throughout this section:**

(1) "Felony" has the meaning set forth in IC 3-8-1-5.

(2) "Public officer" means any person, elected or appointed, who holds any state, county, township, city, or town office.

(b) Any public officer convicted of a felony during the public officer's term of office shall:

(1) be removed from office by operation of law when:

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- 1 (A) in a jury trial, a jury publicly announces a verdict
 2 against the person for a felony;
 3 (B) in a bench trial, the court publicly announces a verdict
 4 against the person for a felony; or
 5 (C) in a guilty plea hearing, the person pleads guilty or
 6 nolo contendere to a felony; and
 7 (2) not receive any salary or remuneration from the time the
 8 public officer is removed from office under subdivision (1).
 9 (c) The subsequent reduction of a felony to a Class A
 10 misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5 after the:
 11 (1) jury has announced its verdict against the person for a
 12 felony;
 13 (2) court has announced its verdict against the person for a
 14 felony; or
 15 (3) person has pled guilty or nolo contendere to a felony;
 16 does not affect the operation of subsection (b).
 17 (d) If the conviction is:
 18 (1) reversed;
 19 (2) vacated;
 20 (3) set aside;
 21 (4) for a felony other than a felony arising out of an action
 22 taken in the public officer's official capacity, reduced to a
 23 Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5;
 24 or
 25 (5) not entered because the trial court did not accept the guilty
 26 plea;
 27 and the public officer's term has not expired, the public officer
 28 shall be reinstated in office and receive any salary or other
 29 remuneration that the public officer would have received had the
 30 public officer not been removed from office.
 31 (e) If the conviction is reversed, vacated, or set aside and the
 32 public officer's term has expired, the public officer shall receive
 33 any salary or other remuneration that the public officer would
 34 have received had the public officer not been removed from office.
 35 (f) A vacancy in a public office caused by the removal of a public
 36 officer under this section shall be filled as provided by law. If a
 37 convicted public officer is reinstated, the person filling the office
 38 during the appeal shall cease to hold the office.
 39 (g) This subsection applies whenever:
 40 (1) a public officer is removed from office by operation of law
 41 under subsection (b); and
 42 (2) a vacancy occurs in a state, county, township, city, or town

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office as the result of the removal from office.

The court must file a certified copy of the sentencing order with the person who is entitled under IC 5-8-6 to receive notice of the death of an individual holding the office. The person receiving a copy of the sentencing order must give notice of the vacancy in the same manner as if the person had received a notice under IC 5-8-6. The person who is required or permitted to fill the vacancy must comply with IC 3-13.

(h) This subsection applies if a public officer is reinstated in office under subsection (d). The court must file a certified copy of the order reversing, vacating, reducing, or setting aside the conviction with the person who is entitled under IC 5-8-6 to receive notice of the death of an individual holding the office. The person receiving a copy of the order must give notice of the reinstatement in the same manner as notice of a vacancy would be given under IC 5-8-6. The person receiving a copy of the order must also give notice to the person who was selected to fill the vacancy before the reinstatement occurred.

SECTION 3. IC 36-4-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) The office of executive becomes vacant whenever the executive:

- (1) dies, resigns, or is removed from office;
- (2) ceases to be a resident of the city;
- (3) is convicted of a felony, as provided in ~~IC 5-8-1-37~~, **IC 5-8-1-38**; or
- (4) is unable to discharge the powers and duties of his office for more than six (6) months.

(b) The vacancy shall be filled under IC 3-13-8.

SECTION 4. IC 5-8-1-37 IS REPEALED [EFFECTIVE JULY 1, 2007].

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